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Supreme Court, U.S.
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No. 03-1084

IN THE

SUPREME COURT OF THE UNITED STATES

ELOY A. ROLE

Petitioner,

vs.

ATCO PRODUCTS INC.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARY TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR REHEARING

Eloy A. Role
Plaintiff *pro-se*
22 Garrison Street
Newark, NJ 07105
(862) 452-2003

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RELATED CASES AND PROCEEDINGS

There is an appeal by Petitioner waiting adjudication before the New Jersey Department of Labor, Board of Review, Docket No. 01-B-02766-000-XO.
The appeal relates to a charge of misconduct at the work place made by Respondent against Petitioner.

There is a Judicial Notice before this Court submitted by Petitioner according to the provisions of Federal Rule of Evidence, Rule 201 (d).

REASONS TO GRANT THE PETITION FOR REHEARING

Petitioner Eloy A. Role's Petition for Rehearing ("Petition") should be granted.
Petitioner's request to this Court of Judicial Notice in connection with the telephone logs that belong to the day 19 of July 2001, between 9:30 A.M. and 11:00 A.M. where Petitioner assisted to a hearing carried out before the New Jersey Department of labor Wage and Hour Compliance, in which together with the Petitioner it was assisted by Sylvia Farley, referee and Atco's president Martin Gorstein sets the foundation of Petitioner's Petition for a Writ of Certiorary in the sense that on the Petitioner's case there was not an Award by Default that can sustain later resort to preclusionary issues at the District

Court, Court of Appeals and the Supreme Court.
The foundation of the case has been rested in a false premise of a Default Judgment granted to the Petitioner by the New Jersey Department of Labor, Wage and Hour Compliance later on appealed by the Respondent before the Supreme Court of the State of New Jersey, Law Division.
The denial of Petitioner's Petition for Rehearing will enable Respondent and its Counsel to get along in the crimes of perjury and obstruction of justice.

I

RESPONDENT KNEW BEFOREHAND THE SOUNDNESS OF PETITIONER"S CASE AND HAD NO MEANS TO REVERT OTHER THAN TO THE DELINQUENT ONES TO SUSTAIN HIS CASE, NAMELY FABRICATION OF EVIDENCE PERJURY AND OBSTRUCTION OF JUSTICE.

It has been always understood —— the inference, indeed, is one of the simplest in human experience ——— that a party's *falsehood* or other *fraud* in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of true and merit. the inference thus does not necessarily apply to any specific fact in the cause, but operates indefinitely though strongly, against the whole mass of alleged facts constituting his cause, excerpts from Wigmore on

evidence, §278. (2) **Falsehood, fraud, fabrication and suppression of evidence, bribery spoliation and the like.** (citations omitted).
Further from the same citation:

> "(1) The use of fraudulent practice in a *separate litigation* has of itself no significance other than a reflection on the opponent's general character as an unscrupulous man . . . ".

In the case at hand the intervening circumstance of a substantial or controlling effect is the Respondent's evidence, that operated in detriment of the Petitioner. But such evidence is derivative as it was above already stated by Petitioner. The evidence introduced by Respondent broke the causal connection between a New Jersey Department of Labor referee's unlawful conduct that granted Petitioner a default judgment being Respondent appearance made via telephone. The evidence presented by Respondent as it was depicted by Petitioner in his Petition for a Writ of Certiorari is derivative since it was discovered by Respondent's Counsel himself, ***See*** Petitioner's Petition at Appendix A.7. Summarizing, it was Respondent's Counsel who stated that Atco ***"inadvertently failed to appear to the hearing".*** It was Respondent's Counsel not Petitioner who discovered illegally obtained evidence and brought over what later on resulted to be Petitioner's contentions of perjury, subordination of perjury and obstruction of justice on the side of Respondent and his Counsel. On the other hand when Petitioner reverted to the provisions of Federal Rule of

Evidence, Rule 201 (d), Petitioner proved his case beyond of the reasonable doubt. That in the Petitioner's case there was a default judgment is no more no less than evidence illegally obtained by Respondent, his Counsel and a referee of the New Jersey Department of Labor Wage and Hour Compliance Division, the whole Petitioner's case resumes in this spoliation.

So far Petitioner has pleaded in the context of **evidence** introduced by Respondent to sustain his case.
Focusing the matter from the point of what a default judgment means and considering what constitutes an appearance, [T]raditionally, to make an appearance one has to file documents or actually appear before a court. *See* Bass v. Hoagland (CA5 Tex) 172 F2d 205, cer den 388 US 816, 94 L Ed 494, 70 S Ct 57 (citations omitted). Precisely what happened in the Petitioner's case, Martin Gorstein, Atco's president made appearance via telephone to the hearing held at the New Jersey department of Labor Wage and Hour Compliance on July 19, 2001 in addition he faxed to the referee documents related to the payments made to Petitioner and this is the **Judicial Notice** that Petitioner filed with the Supreme Court on February 27, 2004 namely, the New Jersey Department of Labor, Wage and Hour Compliance Division's telephone records belonging to the 19th of July 2001.
An appearance within the meaning of the rule needed not to be a direct response to the complaint; there may be an appearance whenever a defendant takes, seeks or agrees to some step in the

proceedings that is beneficial to himself or herself or **detrimental** to the plaintiff. *See* Williams v. Jennette, 77 NC App 283, 385 SE2d 191. Thus, any conduct on the part of a defendant which indicates an intent to defend may constitute an appearance within the meaning of such a rule. *See* J. Slotnick Co. v. Clemco Industries (DC Mass) 127 FRD 435 (citations omitted).

CONCLUSION

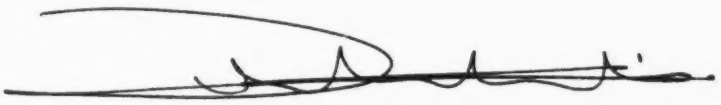
Petitioner has interposed in his Petition for Rehearing intervening circumstances of substantial and controlling effect on the grounds of his Petition such as illegally obtained and furnished evidence used in Petitioner's detriment to defeat his outstanding case still waiting for its day in court.
For the foregoing reasons Petitioner's Petition for a Rehearing should be granted.

Respectfully submitted

Eloy A. Role
Petitioner *pro-se*
22 Garrison Street
Newark, New Jersey
(862) 452-2003

CERTIFICATION

Petitioner certifies that his Petition for Rehearing obeys to the exigency that justice must be satisfied in his case. The Petition does not intend to delay any further proceedings if any. Nevertheless, if it were the case, Petitioner will afford them to the full extent of law.



Eloy A. Role
Petitioner *pro-se*